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November 20, 1995

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

VIA HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

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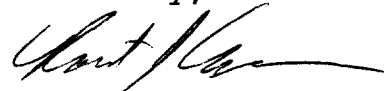
Re: In the Matter of Advanced Television Systems and
Their Impact Upon the Existing Television Broadcast
Service: Docket No. MM Docket 87-268

Dear Mr. Caton:

Transmitted herewith by its attorneys on behalf of the Cable
Telecommunications Association ("CATA"), is an original and four
copies of Comments in the above-referenced proceeding.

If any additional information is desired in connection with
this matter, please contact the undersigned counsel.

Sincerely,



Robert J. Ungar

Enclosure

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FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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COMMENTS OF THE CABLE TELECOMMUNICATIONS ASSOCIATION

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COMMENTS OF THE CABLE TELECOMMUNICATIONS ASSOCIATION

1. The Cable Telecommunications Association ("CATA"), hereby files comments in the above-captioned proceeding. CATA is a trade association representing owners and operators of cable television systems serving approximately 80 percent of the nation's more than 60 million cable television households. CATA files these comments on behalf of its members who will be directly affected by the Commission's action.

2. The cable television industry has been deeply involved in the development of ATV, nee HDTV, since the inception of the Commission's initial inquiry in 1987. Clearly, cable operators have an interest and concern if the Commission adopts a new television transmission standard. Against what was considered the inevitable day that television licensees began broadcasting HDTV, cable operators took an early interest. CableLabs contributed time and personnel to the ongoing test bed effort at the ATV test center in Alexandria, VA. It is obviously a concern to cable operators and broadcasters alike that an HDTV signal be able to pass through a cable system unharmed. Rather than turning its back on this new technology, cable operators assumed that some day they might wish to provide HDTV to their subscribers and joined the effort.

Whither HDTV?

3. CATA has no institutional brief for HDTV. One is entitled to a certain skepticism about the success of a transmission standard that broadcasters have no incentive, and apparently no desire, to adopt. Indeed there is little compelling justification for the Commission not only to mandate an HDTV standard, but to require HDTV to be provided, no matter how liberal the schedule. The transition to HDTV will be expensive. Broadcasters seem not to want it. There is no longer a threat (if there ever was) that some foreign standard will take hold thus capturing a larger share of our now non-existent domestic television manufacturing capability. The early warnings that without domestic development of HDTV, our defense technology would somehow become beholden to others are no longer heard. They have evaporated along with the cold war, or perhaps because they were false to begin with. But, and it is a big but, if the Commission does not mandate an HDTV standard and designate spectrum for the sole use of HDTV there will be no HDTV. If the spectrum is permitted for another use, it will be gone without hope of recapture. It is folly to suppose that television licensees will ever abandon the benefits of four or five more television stations, courtesy of the new spectrum once designated for HDTV. Without this spectrum, however, there will be no HDTV, and even for those of us not enthusiastic about HDTV generally, it is sobering to realize that the practical effect of permitting ATV spectrum to be used for SDTV will be to foreclose the technology of HDTV.

4. It would be another blow to the eventual emergence of HDTV if the Commission permits the sale of television receivers that can display SDTV, but not

HDTV or even receivers that display HDTV signals as a lower resolution SDTV picture. Whatever the eventual costs of new digital receivers, initially they will be expensive. If a large segment of the public buys expensive new receivers that cannot display HDTV, it is even more unlikely that the sale of true HDTV receivers will be successful. If the Commission truly expects to abdicate the responsibility for making hard choices and leave decisions to the marketplace, then it at least ought to create a level playing field. Only if the new generation of digital receivers are capable of displaying all permissible formats will HDTV be given even a chance to emerge as the preferred technology.

5. The Commission is in the strange position of determining whether a species yet unborn should be threatened with extinction. It seems odd that having put so much time and effort into the development of HDTV, the Commission would now consider policies likely to cause its doom. There will only be HDTV if the Commission decides it is in the public interest to have it and reserves spectrum for its exclusive use. Any other spectrum proposal, no matter how fashionable in terms of economic theory, will have the likely result that HDTV will die aborning.

The Must-Carry Issue.

6. The Cable Act of 1992 contemplated that the development of HDTV would require the Commission to revisit its must-carry rules. It was not clear, however, just what this would mean. Thus the Act stated:

ADVANCED TELEVISION - At such time as the Commission prescribes modifications of the standards for television broadcast signals, the Commission shall initiate a proceeding to establish any changes in the signal carriage

requirements of cable television systems necessary to ensure cable carriage of such broadcast signals of local commercial television stations which have been changed to conform with such modified standards.

At the time the Cable Act was passed, "Advanced Television" was HDTV. The Advanced Television Advisory Committee was well on its way to choosing an HDTV standard and the Congress was well aware of it. Congress could have required simply that stations operating in HDTV format had to be carried. It did not. Rather, it left the Commission with the problem of determining when mandated HDTV carriage would occur and whether, during some transition period, mandated carriage would apply to both NTSC format and HDTV channels. CATA will not restate here its conviction that the must-carry regulations, as well as the must-carry section of the Cable Act are unconstitutional. This issue is still on a path to resolution in court. Our comments here, therefore, are based only on the unpleasant possibility that when advanced television arrives, must-carry may not yet have passed into the graveyard of cable regulations to be interred alongside such concepts as "transition systems" and "tier neutrality."

7. With respect to HDTV, CATA believes that the Commission should not impose must-carry obligations until more is known about the likely acceptance of the new service. No one knows now how rapidly stations may convert to HDTV or even if it will prove successful. Thus it would be premature to give HDTV channels must-carry status now. Indeed, even if the Commission retains its authority to require carriage of television stations, it would be well advised to monitor the development of HDTV for a number of years before acting. At some point, when HDTV has reached some critical mass, or when enough HDTV receivers have been sold, it can be assumed that cable systems will begin carrying HDTV signals with or without a regulatory imperative. If this

becomes the case, then no regulation at all is necessary. In any event, however, it simply makes no sense to mandate carriage before there is even any indication that the broadcast community intends to switch to HDTV.

8. Even if broadcasters unanimously embrace HDTV, immediate imposition of must-carry rules would be inappropriate because it would require cable operators to make twice as many channels available for local broadcasters. It should be noted that the 1992 Cable Act contemplated specified complements of local station carriage based on channel capacities as they existed at the time. Although there is clearly a trend toward larger channel capacities, in the few years since adoption of the Act there has not been significant change. For instance, based on data from Television Factbook, in 1991, only 9.15 percent of systems had more than 54 channels. The latest data show that this number has risen only to 12.79 percent. The Cable Act and the Commission's rules dictate that systems with more than 12 channels dedicate up to one third of these channels for carriage of local broadcasters. The average number of local commercial stations in the top 25 television markets is 10.28. If a system with 50 channels had to carry twice this number, it would have to carry 20 stations. Forty percent of its channel capacity (more than required by the Cable Act) would have to be used. In the future, as systems re-build, embracing higher capacity technology, channels will be available. But most systems now do not have the capacity. Operators have planned channel offerings based on a core of local broadcast signals. The Commission certainly could not expect them to make immediate room for HDTV channels by dropping others. If the Commission waits, there will be a confluence of technology. HDTV (should it prove desirable to broadcasters and the public) will not make its entry into the market for

several years. HDTV receivers will not be available in significant quantity for several years. Cable systems will not have expanded channel capacity for several years. We propose therefore that the Commission simply wait. "Sufficient unto the day is the evil thereof."

9. Muddying the waters is the Commission proposal to permit television licensees to use ATV spectrum for SDTV transmissions. Again, we believe that it is unlikely that HDTV will ever thrive in an environment that permits ATV spectrum to be used for non-HDTV purposes. But if the Commission does permit SDTV, it is clear that the future of ATV spectrum use will be even more uncertain. If television licensees are given a choice of how to use spectrum, with market acceptance as the ultimate determinant, there is simply no telling what the ultimate successful use of the spectrum will be. The Commission, itself, explains that the state-of-the-art permits the transmission of video, "dozens" of CD quality audio signals, and "huge" amounts of data. It may well be philosophically pleasing to allow the market to determine the use of ATV spectrum, but, assuming broadcasters are permitted to use the spectrum for whatever commercial schemes they can conjure, must-carry regulation, if any, would have to await at least the development of a trend simply to answer the question, "Carry what?"

10. Permitting the use of ATV spectrum for SDTV transmission raises an additional concern. If the spectrum is ultimately used by each licensee for four SDTV video transmissions, it is inevitable that broadcast licensees will demand, not merely that the additional 6 MHZ channel used for SDTV be sent through a cable system to subscribers who have purchased ATV receivers of one kind or another, but also that the

system itself decode the SDTV signal and convert it to four separate analog channels to be received by regular NTSC receivers. Broadcasters would attempt to condition their retransmission consent to the carriage of their NTSC channel on the additional carriage of four separate SDTV channels converted for analog use. Under this scenario, in the top twenty-five markets, even systems with 100 channel capacities would have to devote 50% of their channels to carriage of local broadcasters! (At the extreme, there is the specter of systems serving the Los Angeles area having to carry 72 local broadcast signals!) Of course, all broadcasters could not be accommodated because the Act requires no more than one-third of a system's capacity be devoted to local signal carriage. The extra channels of some local broadcasters might be carried, while the channels of others would not. It is clear that Congress did not anticipate that there might be a sudden glut of "new" stations clamoring not only for carriage, but being used as bargaining chips in retransmission consent negotiations.

11. In addition to the numbers problem that would be created If the Commission were to permit demands that ATV signals be converted to analog channels, it is also likely that such a practice would delay, if not make impossible the sale of ATV receivers. Broadcasters have already demonstrated that their primary interest is in additional outlets, not that programming be received in any higher quality. If the Commission wants to promote the sale of ATV receivers so that sometime, while some of us are still alive, spectrum can be recaptured for other uses, then it should not sanction demands that ATV signals be converted to analog by cable systems.

12. CATA believes that the Commission should not permit the carriage of local broadcast stations to be held hostage to carriage of whatever material may be carried on

ATV spectrum, however it is ultimately used. Demands on channel capacity would be too great, certainly beyond anything envisioned by Congress. It is not enough to argue that the alternative is simply not to carry the local signals. Local signals will be carried (as they have always been) with or without the must-carry rules. If it becomes the intent of the Commission to initiate an entirely new generation of stations, then it is certainly premature to mandate carriage before there is some sense of how many stations there might be, how many broadcasters will use new stations, what kind of stations there might be, and what proportion of such stations will survive. We do not even know at this time whether ATV spectrum will be used by existing broadcasters (in which case there will be some required amount of simultaneous programming) or whether the spectrum will be auctioned (in which case there will be no simultaneous programming). Cable operators cannot be expected to plan now in the face of these uncertainties.

Conclusion.

13. It is clear that while the Commission is moving closer to choosing an HDTV standard, there is now more uncertainty swirling around ATV than ever before. Observing these events, CATA is convinced that at this time, no one, broadcasters, cable operators or the Commission, knows what ultimate use will be made of ATV spectrum, or by whom. Cable operators know only that a signal based on the Grand Alliance standard can pass successfully through a cable system. But whether such a signal is used for HDTV, a multiplicity of SDTV stations, audio channels, data transmission or whatever else, seems up in the air. Under these circumstances, consideration of must-carry or retransmission consent requirements should be postponed. There simply cannot

be a rule saying that whatever is transmitted in whatever numbers must be carried on a cable system. Moreover, it is clear that such a rule was not anticipated, or required by Congress. Our message to the Commission is, "Let's find out what ATV is going to be before adopting more regulations."

Respectfully submitted,

THE CABLE TELECOMMUNICATIONS
ASSOCIATION

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